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RECEIVED: 10/3/19Defendant's Response to Government's Objection
to the Pre Sentence Investigation ReportU.S. DISTRICT COURT
EASTERN DISTRICT COURT
DAVID A. O'TOOLE, CLERK

Hello Mrs. Linda,

I am writing in regards to the Government's Objection to the Pre Sentence Report.

I have raised many concerns and issues in regards to the inaccurate and materially untrue information that was submitted to U.S. Probation from the Government.

I object to the Government seeking to make me responsible for the bogus uncorroborated testimony that was given by Derek Harrison and Tamar Tucker in trial in regards to drugs they have seen or received. No evidence in the trial record supports their testimony.

I have filed several Prose motions challenging the sufficiency of the evidence presented at Trial, as it is essential to the base offense level charged in the PSR.

- Count One in the Indictment charged (Conspiracy to Possess with Intent to Distribute 50 Grams or more). In *U.S. v. CEA*, 914 F.2d 881 (7th Cir 1990) The government acknowledges that in reviewing the sufficiency of the evidence the initial issue is the nature of the conspirators' alleged agreement. See Reporter's Transcript of Excerpts of Trial Testimony of Tamar Tucker - alleged Co-Conspirator. In the context of a narcotics transaction, neither a buyer nor a seller can be guilty of a conspiracy to possess a narcotic with intent to sell merely because of the relationship created by that sale. *U.S. v. Manzella*, 791 F.2d 1263, 1265 (7th Cir 1986). The government further argues that while mere association with conspirators is by itself insufficient to prove participation in a conspiracy, a single act may be sufficient evidence to prove a conspiracy if it can be inferred that the act was "intended to advance the ends of the conspiracy." *U.S. v. Xheka* 704 F.2d 974, 988-89 (7th Cir. 1983). June 28, 2019, Defendant was found guilty of Conspiracy to Possess Methamphetamine with the intent to distribute it in violation of 21 U.S.C. § 841.

This charge requires proof that Defendant acted with specific intent to commit the underlying offense, and in addition took a substantial step toward its completion. *U.S. v. Rovetuso*, 768 F.2d 809, 821 (7th Cir. 1985). Defendant claims the government failed to prove either pre-requisite beyond a reasonable doubt.

The Indictment charges Defendant not only with a drug offense, but it also alleges that defendant "did corruptly obstruct and impede or endeavor to influence, the administration of justice... in violation of 18 U.S.C. § 1503" (Count Two) and that he "did knowingly engage... and did knowingly attempt to engage in misleading conduct toward another person, with the intent to influence, delay, or prevent testimony... in violation of 18 U.S.C. § 1512(b)(4).

The Supreme Court of the United States has suggested that "corruptly", in the context of obstruction of justice, involves an element of dishonesty that is necessary for a finding of guilt. See *Arthur Andersen LLP v. United States*, 544 U.S. 696, 706-07 (2005) (noting that "the Fifth Circuit Pattern Jury Instruction for § 1503... defined corruptly as knowingly and dishonestly, with the specific intent to subvert or undermine the integrity of a proceeding." Moreover, the definition of "misleading conduct" for tampering with a witness in violation of 18 U.S.C. § 1512 includes "inviting reliance on a writing or recording that is false, forged, altered, or otherwise lacking in authenticity." Accordingly, the charges of obstruction of the due administration of justice and tampering with a witness by misleading conduct was based on improper criteria unsupported by the record. In accordance with the Supreme Court decision in *Stirone v. U.S.* when the government chooses to specifically charge the manner in which the defendant's statement is false, the government should be required to prove that it is untruthful for that reason. 361 U.S. at 219, 80 S. Ct. 270. To allow otherwise would permit the Jury to convict the defendant on a basis broader than that charged in the Grand Jury Indictment.

In regards to Count Two and Count Three, I am attaching documents showing proof of why I shouldn't be enhanced 2-levels for obstruction of justice and why I am objecting to Count Three - Tampering with a witness (misleading conduct) - 000946, 000947 of the attached shows where my attorney submitted to the court our Exhibits for trial, and the government alleges in Count Two that defendant submitted to the Court fraudulent Facebook messages purported to have been written by a Government Witness; 000948, 000949, 000950, 000951, 000952

000948, 000949, 000950, 000951, 000952 are the documents and messages the government alleges are fraudulent or false.

In trial the government failed to prove the element of dishonesty which is necessary for a finding of guilt in regards to the obstruction of justice charge.

In trial North Texas Regional Computer Forensics Laboratory Expert witness for the government Scott Morris, reported and testified as to his finding of the electronic devices that was seized that it cannot be determined who typed the messages. See report in possession of the government - Bates Stamp Number, GOV 000015 to GOV 000032.

I have received notice from the court in which the trial court judge referred my Pro Se motion to Judge Hawthorn for consideration and determination for appointment of new counsel. It is my hope that he allows me to raise these issues and concerns set forth above as well as the Post-Trial Pro Se Motions that has been filed on my behalf in a timely manner after trial.

It should be noted that there was never an agreement between Tamar Tucker, defendant would like to direct your attention to the Trial Transcript Testimony Pages 99-102, 107, 108 that was submitted to the court as attachments in the Motion For An Evidentiary Hearing.

To Join a conspiracy, then, is to join an agreement, rather than a group. It follows that to be a conspirator 'you must know of the agreement, U.S. v. Cerro, 775 F.2d 908, 911 (7th Cir 1985) and must intend to join it U.S. v. Bruun, 809 F.2d 397, 410 (7th Cir 1987). In this case there is no agreement between Tamar Tucker or any other person to distribute drugs. A defendant must show both that he did not conspire with each defendant and that he was prejudiced by being tried with defendants who were not his co-conspirators U.S. v. Townsend 924 F.2d 1385 (7th Cir 1991). Defendant also argues an agreement between a defendant and Lyndell Talley whom was acting purely as an government agent cannot be a conspiracy. See U.S. v. Escobar de Bright, 742 F.2d 1196, 1200-01 (9th Cir. 1984); Sears v. U.S., 343 F.2d 139, 142 (5th Cir 1965) Defendant - Winfred Ware Jr., respectfully pray that you file these documents with PACER so that the record would show a response in regards to the Governments Objection to the PSR.

Wifol Ware Jr

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Messenger

www.facebook.com

Lyndell Talley

Lyndell Talley

Earnest Hardy

Aya Yrrhc

Jackie Tatum

Jerry Castleberry

Detra Owens

James Galindo

Charde Salone

Laquilia Blackshire

Lyndell Talley

You and Lyndell Talley aren't connected on Facebook

Lyndell Talley

ay whats up bro this big talley. I know you fucked up about how shit went down with you as far as me being the informant goes, but I never meant to try to put you in shit it was the deputy officer Chris Welk who threw your name in with the other ten people I owed to the ATF agent craig. I just talked to him and he was telling me how cocky you is. you had court today right.

Man this some mess up stuff you did and they got me doing this they acting like I done sold you drugs I told the agent Craig and the US attorney I never sold you anything I need you to sign some kind of statement so I can get my name cleared of this stuff

I cant sign any statements bro unless they against you, they gave me a CI number in order for me to

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5:45 PM
7/12/2018

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Messenger

www.facebook.com

Lyndell Talley

Messenger

Lyndell Talley

Earrest Hardy

Aya Yrrehc

Jackie Tatum

Jerry Castleberry

Detta Owens

James Galindo

Charde Salone

Laquilia Blackshire

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I cant sign any statements bro unless they against you, they gave me a CI number in order for me to stay out of jail for what I did in return, I had to give them names, video and audio. They know you didn't sell me any drugs that's why im touching bases with you cause I don't wanna see you get fucked off or do any time for something you hadn't did. Ima be honest with you Chris Welk with the Panola County Sheriffs is the one who has it out for you because ATF agent Craig didn't even know you.

man look they wanted me to just make contact with you and get tamar to be involved and tamar knew this cause I payed him a hundred dollars to be involved that's why he was calling your phone that day many of times. even though you didn't sell me any drugs they still wanted you to be part of the conspiracy like you did because of the videos of me, you, and him talking, and the phone calls he made to you. man believe me I know how dirty they tryna play you that's why im reaching

May 29th 7:14pm







Certificate of Service

I certify a true and correct copy of the above letter has been hand delivered, pre-paid postage to the District Clerk and parties written below on the 30th day of September, 2019.

Cause No: 9:18 CR 43

- Law Clerk

Jefferson County of Beaumont, TX - 300 Willow Street, 77701

Angelina County of Lufkin, TX - 104 North Third Street, 75901

- Honorable Judge Marcia A. Crone

Jefferson County of Beaumont, TX - 300 Willow Street, 77701

- Assistant United States Attorney - Lauren Gaston

Angelina County of Lufkin TX - 415 South First St Suite, 201 75901

- Defendants Attorney - Greg C. Gladden

Harris County of Houston, TX - 3017 Houston Avenue 77009

Respectfully submitted,

Date: 9/30/2019

Wf/Wr

Winfred Ware Jr

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